SOAH DOCKET NO. 582-25-11243
TCEQ DOCKET NO. 2024-1750-MWD

APPLICATION BY CULLEN RV RESORT, LLC FOR TPDES PERMIT NO. WQ0016309001	**§** **§** **§** **§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

PROTESTANT BRAZORIA COUNTY'S EXCEPTIONS TO PROPOSAL FOR DECISION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Protestant Brazoria County ("County" or "Protestant") and files this, its Exceptions to the Proposal for Decision ("PFD") and in support thereof, would show the following:

I. INTRODUCTION

Protestant excepts to the Administrative Law Judge's ("ALJ") recommended actions, proposed Findings of Fact, and proposed Conclusions of Law. The proposed Texas Pollutant Discharge Elimination System ("TPDES") permit, TPDES Permit No. WQ0016309001 ("Draft Permit"), that is the subject of this proceeding, would allow Cullen Road RV Resort LLC ("Applicant") to discharge 8,000 gallons per day ("gpd") of treated wastewater into a proposed discharge route that is primarily comprised of stormwater facilities owned and maintained by the County. Protestant contends that the Applicant did not establish its prima facie case in this matter. The Applicant submitted an application for a TPDES permit ("Application") that contained misrepresentations and omitted required information that was required by TCEQ in violation of Texas Water Code §26.027(b). The County provided clear and unrefuted testimony and evidence that the Applicant knowingly planned to discharge effluent into the County's stormwater facilities over the County's objections and without the County's permission. The TCEQ was aware of the fact that the Applicant did not have permission to discharge into County property during the

application review process, but chose to move forward with the Application even when made aware of this significant deficiency and misrepresentation in the Application. Additionally, the TCEQ found errors and omissions during *this contested case hearing process*, and rather than admit that the Application was indeed incorrect and incomplete, the TCEQ allowed the Applicant to supplement the Application information (information that was still incorrectly calculated and unsupported with any documentation) only days before the Applicant and TCEQ's testimony was due, and weeks after the Protestant had filed testimony. Granting such a grossly deficient and incorrect permit application undermines application requirements in the Texas Water Code and TCEQ's own procedures for application review and permit approval, and is clearly in violation of Chapter 26 of the Texas Water Code.

From a policy perspective, why would TCEQ include questions in a TPDES permit application if there is no responsibility or obligation for an applicant to answer these questions truthfully, or to adequately provide all of the information required in the application process? And what is the point of investing TCEQ resources to conduct reviews of permit applications if, once errors, misrepresentations, or omissions are found, TCEQ staff processes the application despite such an application being incorrect and incomplete? If this Draft Permit is issued, it sends a message to future applicants that the TPDES application process is not to be taken seriously at TCEQ. An application so rife with errors and omissions such as the Application should have been addressed in the TCEQ review process and at the latest the comment period on the Application. Rather, the County had to spend significant time and public resources to challenge the Application to bring light to the deficiencies in the Applications.

In addition to the incorrect and incomplete Application, the Draft Permit is not protective of water quality in violation of the Texas Surface Water Quality Standards ("TSWQS") in violation

of Chapter 305 of the Texas Water Code, and is not compliant with regionalization requirements in violation of Chapter 26 of the Texas Water Code.

The ALJ thus erred in determining that the Application is not in violation of applicable laws and regulations, and the Application should be denied.

II. EXCEPTIONS TO PFD

A. Exceptions to the PFD's Analysis and Recommendations Regarding the Accuracy and Completeness of the Application.

The ALJ recognizes significant errors and omissions in the Application, but instead of stopping the analysis there in compliance with Chapter 26 of the Texas Water Code, the ALJ inexplicably takes the position that nothing in the Draft Permit would be changed by these errors and omissions, so the Draft Permit should be granted. The Applicant misrepresented that it was not discharging into property owned by another entity – rather it proposes to discharge into the County's stormwater facilities, namely a roadside ditch on Joe Road/County Road 102, and an enclosed stormwater drainage pipe located on Bailey Road/County Road 101. The Applicant knew at the time the Application was prepared and submitted that the proposed discharge would enter these County-owned and maintained facilities within Brazoria County road rights-of-way. Tr. 130:22-25-133:1-15 (Young); Tr. 158:17-159:5; 159:11-161:14; 162:16-19 (Gupta); *see* County Exhibits 14, 18, and 19. The County provided extensive testimony as to why the stormwater facilities that comprise the majority of the proposed discharge route cannot handle the additional flow of the proposed discharge. The County has not consented to the use of its stormwater facilities by the Applicant for wastewater discharges. When discovered by TCEQ, the Application should have been returned to the Applicant to either obtain information to discharge into the County's stormwater facilities, or to revise the proposed discharge route before continuing with the Application process. Instead, the County has been forced to expend public funds to protest the

Draft Permit to protect County property and facilities, and ensure that these stormwater facilities are able to function as intended to protect County residents' health and safety. Had the Applicant complied with Texas law, and had TCEQ conducted adequate review of the Application and followed its own procedures for application review, there would not be a Draft Permit in its current form and the County would not have needed to protest the Application.

The ALJ puts undue weight on cross-examination of the County's water quality expert, Dr. Lauren Ross, where Dr. Ross could not say how the Draft Permit itself would be different because of the Applicant's misrepresentation on the Application – focusing only on the water quality impact of this misrepresentation. *See* Tr. 106: 5-17. Further, the ALJ does not cite to any support for the premise that an applicant can give false answers and omit information in a TPDES permit application, but if there is no "harm" shown, an application may still proceed to permit authorization. The ALJ, without basis, disregards the significant amount of evidence of testimony and evidence in the record showing that the Application should have never been processed due to this misrepresentation.

Additionally, the Application did not include required information relating to the justification of permit need to support the proposed wastewater flows, and instead was allowed by TCEQ to supplement the Application during the contested case hearing process. The Applicant is required to provide a justification of permit need. *See* Administrative Record Tab D, Domestic Technical Report 1.1 page 1 (Bates Cullen RV 043); ED-SB-1, page 9, lines 22-29; Tr. 200: 1-4, 17-20 (Bhuiya). This basis for estimating wastewater flow is required as part of the Application but was not provided with the Application. Instead, the Applicant was later allowed to supplement the Application days before testimony was filed by the TCEQ and the Applicant. Tr. 197: 6-9; 200:21 – 201:4 (Bhuiya); *see* ED-SB-1, page 9, lines 28-29. The ALJ defers to the ED's review

of the flow data and the 8,000 gpd limit in the Draft Permit, but how could the TCEQ determine that the Applicant's proposed flow numbers were correct when the information supporting these flows was not provided by the Applicant at the time of the Application. In fact, the TCEQ's witness confirmed that there was no background supporting data for the flow calculations, and stated simply "probably I missed it." Tr. 204:1-5 (Bhuiya). Further, the data to justify need was just a list of numbers provided as Applicant's Exhibit H, numbers that in the Hearing on the Merits were determined to not be based on actual data from the development. Instead, the Applicant calculated the flow number using incorrect TCEQ rules relating to on-site sewer systems versus wastewater systems as required for TPDES permit applications. Tr.:113:11-16; 115: 11-13 (Young); *see* Tr. 116:1-16; 117: 4-15 (Young). The ALJ incorrectly determines that although this late submitted hydraulic flow information was omitted from the Application review and calculated using incorrect parameters, no harm was shown from these incorrect calculations and that the Draft Permit will not allow for any discharge beyond 8,000 gpd. In making such a determination, the ALJ erred in (1) disregarding the fact that the Application again was deficient and should have never proceeded without documentation of permit need and adequate support for proposed flows, and (2) the significant evidence and testimony provided by the County showing that, even without the late submitted hydraulic data, the proposed wastewater flows in the Draft Permit are not accurate for this project. *See* County Exhibit 1, pgs 15-16.

The ALJ erred and provided no statutory basis to disregard the County's evidence and testimony and recommend approval of the Application even though information on the Application was misrepresented, omitted, and incorrect. The Application as submitted in 2024 was incomplete – missing required information – as well as incorrect, with misrepresentations, omissions, and inaccurate data and information. Tex. Water Code § 26.027(b) states that a "person desiring to

obtain a permit or to amend a permit shall submit an application to the commission containing all information reasonably required by" the TCEQ. Tex. Water CODE § 26.027(b). In addition, the TCEQ's instructions for completing wastewater applications states that "[a]n incomplete or incorrectly completed item will be considered a deficiency" in the application review process. *Instructions for Completing the Domestic Wastewater Application*, Form TCEQ-10053, page 20 (October 2024).[1] Thus, the Applicant has violated the Texas Water Code in submitting an inaccurate and incomplete Application, and TCEQ should have addressed these flaws in the Application before proceeding to preparing a draft permit. The ALJ erred and the Application should be denied.

Therefore, the County excepts to and recommends the following changes to the Findings of Fact Nos. 23, 24, 25, 27, and 28 as follows:

> "23. ~~Even though i~~In the Application, Applicant answered "no" to the question "Is or will the treated wastewater discharge to a city, county, or state highway right-of-way, or a flood control district drainage ditch?~~,~~." ~~TCEQ staff understood that the discharge route included a roadside ditch and a storm sewer.~~ This question, as a threshold issue, should have been identified by TCEQ as an application deficiency and the Application returned for correction and completion."
>
> "~~24. The County's expert could not specify how the Draft Permit would have been different had the Applicant answered this question differently.~~"
>
> "25. The County ~~did not~~ provided sufficient evidence and testimony to rebut the prima facie demonstration regarding the accuracy of the Application."
>
> "27. An applicant's failure to calculate hydraulic flows under the chapter 17 rules should have been identified by TCEQ as an application deficiency and the Application returned for correction and completion ~~does not necessarily lead to denial~~. ~~Instead, the ED's permit coordinator confirms that the flows in the application are suitable and then proceeds.~~"
>
> "~~28. Regardless of the methodology used to estimate the flows, the Draft Permit does not authorize discharge over a daily average of 8,000 gallons per day~~."

[1] (*Available at* https://www.tceq.texas.gov/permitting/wastewater/municipal/WQ_Domestic_Wastewater_Permits_Steps.html).

"28. The Applicant did not "submit an application to the commission containing all information reasonably required by" the TCEQ in violation of Tex. Water CODE § 26.027(b)."

The County excepts to and recommends the amendment of Conclusions of Law No. 9 as follows:

"9. The Application ~~satisfied~~ did not satisfy the requirement to submit an application to the Commission containing all information it reasonably requires. Tex. Water Code § 26.027(b)."

B. Exceptions to the PFD's Analysis and Recommendations Regarding Surface Water Quality and Antidegradation

The ALJ also erred in determining that there were no eutrophication concerns relating to the conveyance of effluent through the County's enclosed stormwater pipeline for approximately three miles through an enclosed stormwater pipe. The ALJ disregarded the TCEQ's witness in cross examination admitting that a discharge, regardless of the volume of discharge, that flows for three miles in an enclosed pipe would be impacted differently than a discharge that flows for three miles in an open stream. Tr. 183:21-184:2 (Labrie). The impact of the proposed discharge traveling this far in an enclosed pipe versus open channels was not evaluated by TCEQ. Further, neither the TCEQ nor the Applicant has shown that an exception to Tier 2 antidegradation under Chapter 305 of the TCEQ's rules is applicable to this Application. *See* County Exhibit 1, page 8, lines 10-12, 17-19; 30 Tex. Admin. Code, Chapter 305. Additionally, in disregard of concerns relating nutrient degradation in the receiving waters, the Draft Permit authorizes additional loads of ammonia, nitrate, orthophosphorus, total phosphorus, and total dissolved solids in the receiving waters, with concentrations of total nitrogen and phosphorus existing at higher concentrations than the existing surface water concentrations. County Exhibit 1, page 9, lines 10-29, page 10, lines 1-5. The County has provided sufficient testimony to rebut the presumption that the Draft Permit is

protective of water quality, and has shown that additional nutrient degradation will violate the TSWQS.

The County thus excepts to and recommends the following changes to the Findings of Fact Nos. 33, 34, 35 and 36 as follows:

"33. ~~Because of the distance to Segment 1102 and the small size of the discharge, there is no basis in the record to suggest that a~~ A Tier 2 antidegradation review should have been performed."

"34. The ammonia nitrogen limits in the Draft Permit will not be protective of the receiving waters."

"35. ~~Under the IPs, TCEQ staff considers nutrient limits for a discharge of at least 0.25 million gallons per day, but the discharge under the Draft Permit is only 0.008 million gallons per day.~~"

"36. Under the IPs, Staff could consider nutrients at lower discharge amount if there were specific concerns about high nutrients in the immediate receiving waters.~~, but there are no such concerns with this Application~~ The County provided sufficient testimony and evidence to show that there are specific concerns about high nutrients with the Draft Permit, and Staff should have considered nutrients."

The County excepts to and recommends the amendment of Conclusions of Law No. 13 as follows:

"13. The Draft Permit is not protective of water quality, including the protection of the health of the requester and the requesters' families, the existing uses of the receiving waters, and groundwater in the area in accordance with applicable regulations including the Texas Surface Water Quality Standards in 30 Texas Administrative Code section 309.13(e)."

C. Exceptions to the PFD's Analysis and Recommendations Regarding Nuisance Odor Requirements

In yet another Application deficiency relating to wastewater facility location requirements on the Application, the Applicant checked only the box "Ownership," which would indicate that the Applicant owns all of the property within 150 feet of the proposed wastewater treatment facility. Administrative Record Tab D, page Cullen RV 020. This is incorrect as there are three

tracts of land that are not owned by the Applicant within 150 feet of the proposed treatment facility, and the Applicant's property boundary fails, therefore, to encompass the required 150-foot buffer around the treatment facility. *See* County Closing Arguments, pg. 16. TCEQ allowed the Applicant to address this deficiency during the contested case hearing process by allowing a nuisance odor prevention plan. Tr. 208:9-13. However, Applicant and TCEQ have not shown any measures that would prevent nuisance odors. In fact, the ED's witness confirmed that the wastewater treatment facilities are proposed to be located underground as a purported odor prevention method, but the proposed facilities do not contain measures that would address the odors that will result from required ventilation of these underground facilities. Tr. 196:21-24 (Bhuiya).

The County excepts to and recommends the amendment of Findings of Fact No. 37 as follows:

"37. ~~The Draft Permit requires Applicant to obtain approval of a nuisance odor plan before it can begin construction~~ The Application did not contain sufficient information to address odors from the proposed wastewater treatment facilities."

The County excepts to and recommends the amendment of Conclusions of Law No. 14 as follows:

"14. ~~The submission of a nuisance odor control plan for approval after the permitting process is completed satisfies~~ The Applicant has not provided sufficient information in the Application to adequately address odors from the proposed facilities and has not met the nuisance odor requirements of 30 Texas Administrative Code section 309.13(e)."

III. CONCLUSION

For the foregoing reasons, the County respectfully requests that the TCEQ grant its exceptions and amend the PFD with the corrections set out above to deny the Application, and any other relief to which it is entitled.

Respectfully submitted,

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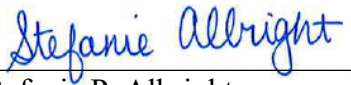
BY: 
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CERTIFICATE OF SERVICE

I hereby certify by my signature below that on this 16th day of October, 2025, a true and correct copy of the above and foregoing document was forwarded to the parties listed below via electronic mail.

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